

(5) Include an order directing either the respondent or the complainant, depending upon whose liability is greater, to pay an amount based on the difference in the amounts determined pursuant to paragraph (b)(4) of this section, on or before a date fixed in the order.

(c) *Costs; prejudgment interest.* The Judgment Officer may, in the initial decision, award costs (including the costs of instituting the proceeding, and if appropriate, reasonable attorneys' fees) and, if warranted as a matter of law under the circumstances of the particular case, prejudgment interest to the party in whose favor a judgment is entered.

(d) *Effect of initial decision.* The initial decision shall become the final decision and order of the Commission thirty (30) days after service thereof, except:

(1) The initial decision shall not become the final decision as to a party who shall have timely filed and perfected an appeal thereof to the Commission in accordance with §12.401 of these rules; and

(2) The initial decision shall not become final as to any party to the proceeding if, within thirty (30) days after service of the initial decision, the Commission itself shall have placed the case on its own docket for review or stayed the effective date of the initial decision.

(e) *Effect of failure to file and perfect an appeal to the Commission.* Unless the Commission takes review on its own motion, the timely filing and perfection of an appeal to the Commission of the initial decision is mandatory as a prerequisite to appellate judicial review of a final decision and order entered pursuant to these rules.

[49 FR 6621, Feb. 22, 1984, as amended at 59 FR 9638, Mar. 1, 1994]

Subpart E—Rules Applicable to Formal Decisional Proceedings

§ 12.300 Scope and applicability of rules.

The rules set forth in this subpart are applicable to proceedings forwarded pursuant to §12.26(c) of the Reparation Rules. The rules in subpart B permitting discovery are applicable in a formal decisional proceeding, as supple-

mented by §12.301. Unless specifically made applicable, the rules prescribed in subparts C and D shall not apply to formal decisional proceedings. Parties to a proceeding forwarded pursuant to §12.26(c) may, by written agreement filed at any time prior to the issuance of an initial decision, or of any other order disposing of all issues in the proceeding, elect to have all issues in the proceeding decided pursuant to the voluntary decisional procedure. Upon receiving a timely filed stipulation signed by all parties evidencing such an election, the Administrative Law Judge shall conduct the proceeding and render a decision pursuant to subpart C of these rules.

§§ 12.301–12.302 [Reserved]

§ 12.303 Pre-decision conferences.

During the time period permitted for discovery pursuant to §12.30(d), and thereafter, the Administrative Law Judge may, in his discretion, conduct one or more pre-decision conferences to be held in Washington, DC or by telephone, with all parties for the purposes of:

(a) Discussing the advisability of electing the voluntary decisional procedure;

(b) Encouraging a settlement of the entire case, or any part thereof (such discussions may be *ex parte* with the consent of all parties);

(c) Simplifying or clarifying issues;

(d) Obtaining stipulations, admissions of fact and of authenticity of documents;

(e) Discussing amendments or supplements to the pleadings;

(f) Encouraging an early settlement of disputes relating to discovery; and

(g) Discussing any matters of relevance in the proceeding.

At or following the conclusion of a pre-decision conference, the Administrative Law Judge may serve a pre-decision memorandum and order setting forth the agreements reached by the parties, any procedural determinations made by him, and the issues for resolution not disposed of by admissions or agreements by the parties. Such an order shall control the subsequent